

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Shevani Patel	Team: Squad #3	CCRB Case #: 201403749	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/09/2014 5:55 PM, Friday, 04/18/2014 , Saturday, 04/19/2014	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 10/9/2015	EO SOL 10/9/2015	
Date/Time CV Reported Sat, 04/19/2014 4:35 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 04/19/2014 4:35 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Joel Polichron	04640	933192	NARCBBN
2. DT3 Joseph Fernandez	01815	940098	NARCBBN
3. SGT Adan Munoz	01313	935372	NARCBBN
4. SGT Omar Colon	03037	929921	NARCBBN
5. An officer			NARCBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Emrah Ates	00257	942967	NARCBBN
2. POM Andre Blake	27155	939924	NARCBBN
3. DT3 Edward Mejia	552	944803	NARCBBN
4. POM Sean Gillespie	19384	947029	NARCBBN
5. DT3 Antonio Santana	06279	933323	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.SGT Omar Colon	Abuse: On April 9, 2014, Sgt. Omar Colon entered § 87(2)(b) in Brooklyn.	
B.SGT Omar Colon	Abuse: On April 9, 2014, Sgt. Omar Colon drew his gun.	

Officer(s)	Allegation	Investigator Recommendation
C.DT3 Joseph Fernandez	Abuse: On April 9, 2014, Det. Joseph Fernandez drew his gun.	
D.SGT Omar Colon	Abuse: On April 9, 2014, Sgt. Omar Colon searched § 87(2)(b) in Brooklyn.	
E.SGT Adan Munoz	Abuse: On April 18, 2014, Sgt. Adan Munoz entered § 87(2)(b) in Brooklyn.	
F.SGT Adan Munoz	Abuse: On April 18, 2014, Sgt. Adan Munoz drew his gun.	
G.DT3 Joel Polichron	Abuse: On April 18, 2014, Det. Joel Polichron drew his gun.	
H.SGT Adan Munoz	Abuse: On April 18, 2014, Sgt. Adan Munoz searched § 87(2)(b) in Brooklyn.	
I. An officer	Abuse: On April 18, 2014, an officer threatened to arrest § 87(2)(b)	

Case Summary

On April 9, 2014, at approximately 6 p.m., Sgt. Omar Colon of Brooklyn North Narcotics supervised the entry of § 87(2)(b) s basement apartment at § 87(2)(b) in Brooklyn (Allegation A). Officers entered with their guns drawn and searched the residence (Allegations B, C and D). § 87(2)(b) and § 87(2)(b) were arrested. On April 18, 2014, at approximately 6:40 p.m., Sgt. Adan Munoz of Brooklyn North Narcotics supervised the entry of § 87(2)(b) s basement apartment at § 87(2)(b) in Brooklyn (Allegation E). Officers entered with their guns drawn and searched the residence (Allegations F, G and H). An unidentified officer told § 87(2)(b) “Shut up. You sound stupid. I should arrest you right now” (Allegation I). § 87(2)(b) and § 87(2)(b) were arrested (complaint encl. 3A-C; telephone statement encl. 3D; CCRB statement encl. 3E-M).

Mediation, Civil and Conviction Histories

- This case was ineligible for mediation. § 87(2)(b) filed a Notice of Claim with the City of New York in regards to the incident that occurred on April 9, 2014, claiming emotional distress and physical injuries to his wrists and hands, and seeking one million dollars as redress (encl. 17A-E). No Notice of Claim was filed in regards to the incident that occurred on April 18, 2014 (encl. 19U).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officers CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 2J).
- Sgt. Omar Colon has been a member of service for 12 years, has had 16 previous CCRB allegations involving six cases and has two substantiated question and a search of person allegations against him (encl. 2A-B).
- Det. Joseph Fernandez has been a member of service for nine years, has had 34 previous CCRB allegations involving 14 cases and has no substantiated allegations against him (encl. 2C-E).
- Sgt. Adan Munoz has been a member of service for ten years, has had 32 previous CCRB allegations involving 11 cases and has one substantiated vehicle search allegation against him (encl. 2F-H).
- Det. Joel Polichron has been a member of service for 11 years, has had 13 previous CCRB allegations involving six cases and has no substantiated allegations against him (encl. 2I).

Potential Issues

- Subject officer Sgt. Colon was rescheduled four times from July 22, 2014 until he appeared on September 9, 2014. Witness officer Det. Edward Mejia was rescheduled seven times from September 11, 2014 until he appeared on November 25, 2014. § 87(2)(g)
[REDACTED]

Findings and Recommendations

Allegations Not Pleaded

- **Force:** § 87(2)(b) alleged that an officer pushed § 87(2)(b) into the living room upon entry on April 9, 2014. § 87(2)(g)
- **Stop and Strip-Search:** § 87(2)(b) was informed by § 87(2)(b) that on April 18, 2014, officers stopped § 87(2)(b) outside of the building and strip-searched him. § 87(2)(b) did not witness this encounter. § 87(2)(g)
- **Frisk and Search:** § 87(2)(b) alleged that before the officers released the other men in his apartment on April 18, 2014, they frisked and searched them. The investigation exhausted all contact attempts which elicited no sworn statements from these individuals. Supplementary database searches and additional contact attempts were made, but no other civilian provided sworn testimony (encl. 18A-X). § 87(2)(g)
- **Gun pointed:** § 87(2)(b) alleged that an officer pointed his gun at § 87(2)(b) on April 18, 2014. Det. Polichron stated that he pointed his gun at § 87(2)(b). In his phone statement, § 87(2)(b) stated that no officer had his gun out. § 87(2)(g)
- **Discourtesy:** In his phone statement, § 87(2)(b) stated that an officer told § 87(2)(b) “Shut the fuck up,” on April 18, 2014. § 87(2)(g)

Explanation of Subject Officers Identification

- On April 9, 2014, Sgt. Colon was the supervisor on scene. § 87(2)(g)
- § 87(2)(b) provided descriptions for six officers of which five he stated were present for both incidents. NYPD documentation and officer testimony confirmed that two separate teams of officers from Brooklyn North Narcotics were present on each incident date. § 87(2)(g)

Allegation A – Abuse of Authority: On April 9, 2014, Sgt. Omar Colon entered § 87(2)(b) in Brooklyn.

§ 87(2)(b) stated that he was with about seven of his friends playing video games inside of the basement of § 87(2)(b) where he resides. One of his friends, § 87(2)(b)

§ 87(2)(b) returned inside after speaking with a friend, who § 87(2)(b) did not know, outside. About five or ten minutes later, § 87(2)(b) heard knocks at the front door. One of his friends, § 87(2)(b) opened the door and officers pushed their way inside (encl. 3E-M). § 87(2)(b) provided a phone statement which was generally consistent with § 87(2)(b)'s statement (encl. 4C). § 87(2)(b)'s cousin, § 87(2)(b) also provided a telephone statement. She arrived at the residence after officers were already inside (encl. 4F-G). The investigation exhausted all contact attempts which elicited no response from the other individuals present (encl. 18A-X).

Det. Fernandez stated that when he and Sgt. Colon were seated in their vehicle, he observed § 87(2)(b) hand a plastic bag containing what he believed to be marijuana to § 87(2)(b) in exchange for U.S. currency. § 87(2)(b) entered the basement door of § 87(2)(b). The officers pulled § 87(2)(b)'s car over and placed him under arrest just a few blocks away. They returned to § 87(2)(b) where they saw § 87(2)(b) outside of the building. Det. Fernandez identified himself as a police officer and approached him. § 87(2)(b) turned and ran into the basement without shutting the door behind him. Det. Fernandez followed him in to place him under arrest (encl. 6B-R). Sgt. Colon's statement generally corroborated Det. Fernandez's account with only two differences: He did not make the observation, but only learned of the hand-to-hand transaction by Det. Fernandez and he entered the apartment along with Det. Fernandez (encl. 5A-E).

Det. Fernandez's supporting deposition notes that § 87(2)(b) committed two misdemeanors and one violation: § 87(2)(b)

The courts have established that warrantless entries into private homes are presumed unconstitutional. One exception to this rule is hot pursuit and the courts have held that in order for this exception to exist, officers must have probable cause to arrest an individual while he or she is outside the private location to be entered and the arrest must have been set in motion in a public place, prior to the individual's flight into the private location. People v. Skinner, 284 A.D.2d 906 (2001) (encl. 1A). However, the hot pursuit exception to the warrant requirement does not apply to arrests for violations or misdemeanors. People v. Cruz, 41 Misc. 3d 1222(A) (2013) (encl. 1B-E).

§ 87(2)(g)

Allegation B – Abuse of Authority: On April 9, 2014, Sgt. Omar Colon drew his gun.
Allegation C – Abuse of Authority: On April 9, 2014, Det. Joseph Fernandez drew his gun.
Allegation D – Abuse of Authority: On April 9, 2014, Sgt. Omar Colon searched § 87(2)(b) in Brooklyn.

§ 87(2)(b) stated that officers entered his residence on April 9, 2014 with their guns drawn. After the officers handcuffed everyone, they searched the apartment, opening drawers and looking under the sheets of the mattresses (encl. 3E-M). Sgt. Colon and Det. Fernandez denied having their guns drawn upon entry (encl. 5A-E; 6B-R). Sgt. Colon stated that they were only inside of the apartment for a few minutes, and that they did not enter any other part of the basement, open drawers, remove sheets nor make any contact with any property in the apartment (encl. 5A-E).

Det. Antonio Santana, assigned to the prisoner van, entered the residence to retrieve § 87(2)(b). He denied conducting any search in the apartment or seeing the other officers entering drawers or compartments (encl. 7A-E). PO Sean Gillespie, also assigned to the prisoner van, did not recall entering the residence (encl. 8A-E). § 87(2)(g)

Allegation E – Abuse of Authority: On April 18, 2014, Sgt. Adan Munoz entered § 87(2)(b) in Brooklyn.

It is undisputed that officers entered the basement of § 87(2)(b) in Brooklyn and effected two arrests for § 87(2)(b).

§ 87(2)(b) stated that he was with about six of his friends playing video games inside of the basement of § 87(2)(b) in Brooklyn where he resides. While there was marijuana inside, they were not smoking it at the time. He did not see the officers enter, but noticed them once they were in the living room (encl. 3E-M). § 87(2)(b) and § 87(2)(b) each provided telephone statements that generally corroborated the entry described by § 87(2)(b) (encl. 4A-E).

Sgt. Munoz stated that a female, who did not identify herself to the officers, made a verbal complaint to them about men smoking marijuana at § 87(2)(b). The officers did not prepare any documentation of her complaint. Without her, they traveled several blocks to the location. During his interview, Sgt. Munoz stated that on the incident date he was familiar with the location as it was the subject of a kite investigation, stemming from several complaints about drug sales and marijuana smoking. From the sidewalk across from the apartment, Sgt. Munoz smelt marijuana. When the officers approached the building, the basement door was wide open and Sgt. Munoz observed men smoking marijuana inside. Sgt. Munoz stated that he entered because the door was open, he could smell marijuana and he could see marijuana being smoked in plain view. He did not have a warrant for the entry, but because there was an open kite investigation, he believed he had the authority to visit the residence and enter it (encl. 9A-F). Det. Polichron also stated that the officers received an anonymous in-person complaint that led them to go to the building. He was familiar with the location, citing prior investigations regarding marijuana. Det. Polichron smelt the marijuana from the sidewalk and when the officers closer approached, he noticed that the door was cracked open and the odor came from inside. He saw several men inside, but could not see if they were smoking. He stated that he and Sgt. Munoz entered because of the odor coming through the open door and the complaint made to them (encl. 10B-Q). Det. Emrah Ates, who worked out of the same vehicle as Sgt. Munoz and Det. Polichron, corroborated the complaint made by the female. He did not initially enter the basement with the officers, but waited outside (encl. 11A-F).

A warrantless entry into a private dwelling may be justified by consent, exigent circumstances or an emergency situation. The factors considered to determine if exigent circumstances exist include a clear showing of probable cause to believe that the suspect committed the crime, the strong reason to believe that the suspect is in the premises being entered, the gravity or violent nature of the charged offense, whether the suspect is reasonably believed to be armed, the likelihood of escape and peaceful circumstances of the entry. People v. McBride, 14 N.Y.3d 440 (encl. 1F-L). Additionally, officers may enter and search a location under the emergency doctrine if they have reasonable suspicion to believe that there is an immediate need for their assistance to protect life or property, if the search is not primarily motivated by an intent to arrest and seize

evidence and if there is a reasonable basis to associate the emergency with the area to be searched. People v. Dallas, 8N.Y.3d 890 (encl. 1M-N).

§ 87(2)(g)

§ 87(2)(g)

Allegation F – Abuse of Authority: On April 18, 2014, Adan Munoz drew his gun.
Allegation G – Abuse of Authority: On April 18, 2014, Det. Joel Polichron drew his gun.
Allegation H – Abuse of Authority: On April 18, 2014, Sgt. Adan Munoz searched § 87(2)(b) in Brooklyn.

§ 87(2)(b) stated that the officers entered his residence on April 18, 2014 with their guns drawn. He stated that officers looked around the residence and opened drawers in the living room furniture. When he returned home after he was released, his clothes were outside of drawers, his sheets were removed from the mattress and cushions were taken off of the couch (encl. 3E-M). Sgt. Munoz and Det. Polichron denied entering drawers, moving the sheets or other furniture or entering any other room (encl. 9A-E; 10B-R). Det. Ates and Det. Edward Mejia, who both stated that they entered to retrieve the prisoners, denied conducting a search to this extent or seeing any other officer do so (encl. 11A-E; 12A-E). PO Andre Blake did not recall entering the apartment (encl. 13A-E) § 87(2)(g)

Allegation I – Abuse of Authority: On April 18, 2014, an officer threatened to arrest

§ 87(2)(b)

§ 87(2)(b) stated that he told an officer that he felt violated because they were in his house without warrants and an unidentified officer responded, “Shut up. You sound stupid. I should arrest you right now” (encl. 3E-M). § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date